



## THE ATTORNEY GENERAL OF TEXAS

February 17, 1987

**JIM MATTOX**  
**ATTORNEY GENERAL**

Mr. David W. Reagan  
Midland City Attorney  
P. O. Box 1152  
Midland, Texas 79702

Open Records Decision No. 459

Re: Whether letter requesting a decision under the Open Records Act, article 6252-17a, V.T.C.S., is subject to required disclosure under the act

Dear Mr. Reagan:

On October 29, 1986, you asked if the Open Records Act, article 6252-17a, V.T.C.S., required the city of Midland to grant a request for information. Concluding that principles discussed in our prior decisions clearly established that the city need not do so, we so responded in an informal letter. You have now advised us that the original requestor has asked for a copy of your October 29 letter. You wish to withhold three portions of this letter on the ground that their release would divulge information held in our earlier response to be protected from forced disclosure.

We have never addressed formally the issue of how the act applies to request letters from governmental bodies. Our practice, however, has been to treat such letters as being generally available to the public. See V.T.C.S. art. 6252-17a, §6(15) (information is public if it is "currently regarded by agency policy as open to the public"). When, for example, a request is assigned a file number to be handled formally, we furnish a copy to the Texas Register, and we also send copies to parties who might wish to brief the issues raised therein. We do this both to insure public notice of the request and to give interested parties an opportunity to provide input. Also, this practice implements the directive in section 7(b) of the act that on receiving an Open Records Act request, the attorney general shall "consistent with standards of due process" render a decision.

We have made two exceptions to the policy of disclosing request letters. If a request letter actually contains the information which is in dispute, we do not disclose that information, for to do so would defeat the purpose of the request. We also attempt to withhold information protected by privacy rights, even where the governmental body that submitted the request raised no privacy argument. See Open Records Decision No. 344 (1982) (attorney general will invoke section 3(a)(1)). This office, however, is often not in a position to know if particular information raises a privacy issue until the information is

carefully reviewed. The best practice, therefore, is for governmental bodies to submit information which is the subject of their request or which raises a privacy claim in a separate document accompanying their request letter, rather than in the letters themselves.

Governmental bodies are advised, therefore, that we generally regard as a public record their letters requesting Open Records Decisions, including any arguments for withholding information under the act. To insure the protection of information which is the subject of the request or which raises a privacy issue, governmental bodies should submit it in a separate document accompanying their request letters.

In this instance, the issue is somewhat different. You ask not about information involved in a pending request, but about material the release of which, you argue, would disclose information which we have already decided is protected from required disclosure. Whenever we conclude that a governmental body may legally deny a request for information, we have necessarily found that the information is within an exception in section 3(a) of the act. To require a governmental body to disclose the contents of its request letter, when to do so would reveal information which we have previously held is within a section 3(a) exception, would effectively negate our previous conclusion. We therefore conclude that, when we have held information to be within a section 3(a) exception, that exception authorizes the governmental body to withhold the portion(s) of its request letter that would disclose this information. A governmental body which receives a request for its request letter and wishes to withhold part or all of its contents must seek our decision. As noted above, to alleviate problems of this nature, governmental bodies should submit information subject to an open records request separately.

We now turn to the facts of this case. In our previous response, we stated that section 3(a)(3) of the act authorized the city to deny the request which was the subject of its October 29 letter to this office. We have examined the three portions of this letter that you have highlighted, and we agree with your contention that their disclosure would effectively reveal information held in our previous response to be protected by section 3(a)(3). The city may therefore withhold these portions of its October 29 request letter.

Very truly yours,

A handwritten signature in black ink that reads "Jim Mattox". The signature is written in a cursive, slightly stylized font. The first name "Jim" is written with a large, sweeping "J" and "i". The last name "Mattox" is written with a large "M" and "x" at the end.

J I M M A T T O X  
Attorney General of Texas

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